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IN THE

Supreme Court of the United States

October Term, 1962.

No. 572.

HAROLD E. VICKERS,

Appellant,

vs.

TOWNSHIP COMMITTEE OF GLOUCESTER TOWNSHIP, et al.,

Appellees.

On Appeal from New Jersey Supreme Court.

MOTION TO DISMISS APPEAL.

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2. Was the complete prohibition of trailer parks anywhere within Gloucester Township, as accomplished by the ordinances of April 22, 1960, lawful? 6

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1. Was the Appellate Division correct in holding that the Township of Gloucester could not by its Zoning Ordinance prohibit the existence of trailer parks and the trailer park business everywhere within the limits of the municipality? ... 6
2. Was the amendment to Gloucester Township's Zoning Ordinance lawfully enacted? 6

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1962.

No. 572

HAROLD E. VICKERS,

Appellant,

vs.

TOWNSHIP COMMITTEE OF GLOUCESTER TOWNSHIP, et al.,

Appellees.

MOTION TO DISMISS APPEAL.

The appellees, the Township Committee of Gloucester Township, et al., submits herewith this motion to dismiss the appeal of Harold E. Vickers, under Rule 16, Par. 1. (a) and (b) of the United States Supreme Court, on the following grounds:

1. That the federal questions sought to be reviewed were not properly raised in the courts below nor argued thereon by the appellant and hence were not passed on by the court below either implicitly nor expressly; and

2. That the judgment rests on an adequate non-federal basis; and

ii. Therefore, that the appeal is not within the jurisdiction of this court.

STATEMENT OF THE CASE.

The appellees rest upon the Statement of the Case contained in the *Statement of Jurisdiction*, pages 5 to 7 thereof, excepting the description of the property where the appellant's proposed trailer camp was to be situated. The appellant has relied on a description contained in the dissenting opinion, Appendix C page 45a. The appellees rely on the more lucid description contained in the majority opinion of the New Jersey Supreme Court which is:

> "The southern section, where plaintiff's lands are situated, includes several residential districts and a business district, but is for the most part relatively undeveloped. The Township's sanitary land-fill area, where non-garbage refuse is disposed and promptly covered by earth; is located about 100 yards from plaintiff's land. Although most of the southern section is in the industrial district, one-family houses can be constructed in that district if the Board of Adjustment gives permission. In fact, home developers have purchased 500 acres within the industrial district and adjacent to plaintiff's property. Mayor Yost and Mr. Motta, chairman of the Planning Board, stated the Township was continually considering changes in the existing zones in order to benefit the Township. The record and zoning map indicate that certain areas which had been previously zoned residential, have recently been reclassified industrial. There was also testimony that the Township, in an effort to eliminate blighted

structures, had on February 8, 1960, appointed a Public Officer who is actively engaged in a program to rid the township of properties which are in 'bad condition,'. . ."

Appellant's Statement of Jurisdiction, Appendix B, page 8a.

ARGUMENT.

The appellant's precarious position on this appeal is predicated upon a 6 line non-illuminatory catch-all statement contained in his second complaint before the trial court below "deprives plaintiff of the use of his property without due process of law, deprives plaintiff of the equal protection of the laws and is otherwise violative of the rights guaranteed to said plaintiff and others similarly situate by virtue of the Constitution of the State of New Jersey and of the United States of America." *Statement of Jurisdiction*, page 7. However, the appellant did not raise this federal point, nor argue thereon during the trial, nor in his appeal to the Appellate Division of the Superior Court of New Jersey, nor did he make such a contention before the Supreme Court of New Jersey. The appellant in effect waived and abandoned his allegation of being deprived of "due process of law" and "equal protection of the laws" by his failure to develop the same before the trial court and by omitting argument before the Appellate Division of the Superior Court of New Jersey and the Supreme Court of New Jersey.

That the questions which the appellant now seeks to have determined by this court were not presented to the Appellate Courts of New Jersey, is made clear by reference

to the briefs filed by the Appellant in the courts below. Annexed hereto are Schedules A and B which are respectively appellant's statement of questions involved presented in his brief to the Appellate Division of New Jersey Superior Court, Appendix B and appellant's counter-statement of questions presented to the Supreme Court of New Jersey. The Supreme Court of New Jersey in its opinion made crystal clear the only issues which it was deciding in this case.

> "The parties agree the only issues on this appeal are: (1) In the circumstances, could the Township through its zoning power totally exclude trailer camps from the municipality? and, (2) Were the procedural requirements of N. J. S. A. 40:55-35 met in the adoption of the zoning ordinance amendment?"
>
> *Opinion of Supreme Court of New Jersey, Statement of Jurisdiction*, Appendix B, page 10a, 37 N. J. 232, 181 A. 2d 129.

Now, at this late date the appellants are trying to enlarge the scope of their appeal and to take up the cudgel of lack of due process, a cudgel which they long ago dropped, but having lost all else now seek to use.

This court has long maintained the principle that, if a federal right was not set up or claimed in the proper court below and argued throughout, the judgment of the highest court of the State in the action is conclusive, so far as the right of review in the Supreme Court of the United States is concerned: *Spies v. Illinois*, 123 U. S. 131, 181 (1887); *Wolfe v. N. Carolina*, 364 U. S. 177 (1960); *Pennsylvania R. R. v. Illinois Brick Co.*, 297 U. S. 447 (1936). Indeed, this court in dismissing for lack of jurisdiction has included references to waiver: *Harding v. Illinois*, 196 U. S. 78

(1904); *Chesapeake & O. Ry. v. McDonald*, 214 U. S. 191, 195 (1909).

In a number of cases this court has decided where a party did not maintain its contentions concerning federal rights through state proceedings that this failure constituted waiver: *Central Union Tel. Co. v. City of Edwardsville*, 269 U. S. 190 (1925); *Parker v. Illinois*, 333 U. S. 571 (1948); and *Michel v. Louisiana*, 350 U. S. 91 (1955).

Not only does the appellant attempt to raise questions of law not presented to the Appellate Courts of New Jersey but he also has placed before this court in his Statement of Jurisdiction many facts and opinions not introduced into evidence nor even argued in the court below. An egregious example of this approach of introducing new facts, theories, and opinions, to this court which were not presented below is found on pages 17, and 18 of the appellant's Statement of Jurisdiction.

CONCLUSION.

The appellees respectfully request that under Rule 16 of this court and the prior determinations of this court that this appeal should be dismissed because the appellant has failed, waived and abandoned any claims respecting impairment of his federal rights so that these questions were not considered and passed upon by the courts below.

Respectfully submitted,

M. GENE HAEBERLE,
Counsel for Appellee.

APPENDIX A.

The following is a quotation from the brief presented in behalf of Harold E. Vickers before the Superior Court of New Jersey, Appellate Division—Docket No. A-965-59, in the matter of Harold E. Vickers, Plaintiff-Appellant, v. Township Committee of Gloucester Township, et als., Defendants-Respondents.

STATEMENT OF QUESTIONS INVOLVED.

"1. was the amendment of April 22, 1960 to Gloucester Township's Zoning Ordinance lawfully enacted?

"2. Was the complete prohibition of trailer parks anywhere within Gloucester Township, as accomplished by the ordinances of April 22, 1960, lawful?"

APPENDIX B.

The following is a quotation from the brief presented in behalf of Harold E. Vickers before the Supreme Court of New Jersey, Docket No. 3555, in the matter of Harold E. Vickers, Plaintiff-Respondent, v. Township Committee of Gloucester Township, et al., Defendants-Appellants.

COUNTER-STATEMENT OF QUESTIONS INVOLVED.

"1. Was the Appellate Division correct in holding that the Township of Gloucester could not by its Zoning Ordinance prohibit the existence of trailer parks and trailer park business everywhere within the limits of the municipality?

"2. Was the amendment to Gloucester Township's Zoning Ordinance lawfully enacted?"